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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 SKIDDIES, INC., et al.,

4 Plaintiffs,

5 v.

16 Civ. 8709 (WHP)

6 SELDAT, INC., et al.,

7 Telephone Conference

8 Defendants.

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New York, N.Y.

10 June 29, 2017

11 4:11 p.m.

12 Before:

13 HON. WILLIAM H. PAULEY III,

14 District Judge

15 APPEARANCES

16 TOPTANI LAW OFFICES

Attorneys for Plaintiffs

17 BY: GABRIEL J. FISCHBARG

18 WACHTEL & MISSRY, LLP

Attorneys for Defendants

19 BY: JOHN H. REICHMAN

DAVID YEGER

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(In chambers)

THE COURT: Good afternoon. This is District Judge Pauley. You're on a speakerphone, and a court reporter is present recording what's being said. Would counsel for plaintiff give his appearance.

MR. FISCHBARG: Gabriel Fischbarg.

THE COURT: All right. Good afternoon, Mr. Fischbarg.

MR. FISCHBARG: Hi, Judge.

THE COURT: Counsel for the defendant.

MR. REICHMAN: Good afternoon. John Reichman and David Yeger for the defendants.

THE COURT: Good afternoon to you gentlemen.

All right. I set this matter down for a phone conference because it looks like the wheels have come off the wagon with respect to settlement before Magistrate Judge Moses; is that fair?

MR. FISCHBARG: Yes, your Honor, at least for now.

THE COURT: Look, you're proposing to brief the motion for disqualification. You know, in reading the letters, Mr. Fischbarg says that he obtained the information from third-party sources and that he's provided it to you, Mr. Reichman, those sources. Leads me to wonder whether the motion has legs.

MR. REICHMAN: Your Honor, we believe it does, and this is the reason: To a certain extent, the motion could end

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1 up being a he said-he said dispute. However, what
2 Mr. Fischbarg said at our last conference was that the only
3 contact that he had with my client was a brief call which my
4 client initiated. We have documentary evidence to indicate
5 that that's not the case. We have telephone records showing at
6 least one call that was initiated by Mr. Fischbarg to my client
7 that lasted 23 minutes. And what my client would be prepared
8 to testify to and include in a declaration is that that
9 conversation involved National Stores, and National Stores is
10 at the heart of the complaint that the plaintiffs have filed in
11 this action.

12 THE COURT: All right. Look, I'm going to tee up the
13 motion, and I'm going to schedule an oral argument. I will
14 accept the proposed schedule for briefing of the motion that
15 you've proposed. It's fairly robust, and, as I understand it,
16 would conclude with reply briefs on July -- I think July 25.
17 So I'm going to set the matter down for an oral argument on
18 July 28 at 12:00.

19 MR. FISCHBARG: That's fine, your Honor.

20 THE COURT: On July 28. I'm going to resolve the
21 issue of disqualification swiftly. I'm going to continue the
22 stay of discovery until I've resolved the disqualification
23 motion.

24 Now, there's also a motion, or a proposed motion, to
25 amend the counterclaims. At this fairly early stage in the

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1 litigation, I see no reason to engage in motion practice. So
2 what I propose to you gentlemen is that any amended answer and
3 counterclaims be interposed by July 19. Just file it. That
4 way on July 28, if I'm able to resolve the disqualification
5 motion, we can determine whether there are going to be any
6 other motions or whether the issue is simply going to be joined
7 on the counterclaims.

8 MR. REICHMAN: That makes sense to us, your Honor.

9 THE COURT: What else can we accomplish?

10 MR. REICHMAN: The only other question, your Honor, is
11 I assume our status conference for July 6 is off?

12 THE COURT: Canceled, yes.

13 MR. FISCHBARG: OK. I have one question. Schedule
14 for discovery is on hold also?

15 THE COURT: Discovery is on hold.

16 MR. FISCHBARG: We submitted a schedule, so that's not
17 going to be entered into at all?

18 THE COURT: That's correct. I will fix a discovery
19 schedule on July 28.

20 MR. FISCHBARG: OK.

21 THE COURT: Of course, the length of the discovery
22 schedule will depend upon how I resolve the disqualification
23 motion.

24 Anything else, gentlemen?

25 MR. FISCHBARG: No.

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1 MR. REICHMAN: Thank you, your Honor.

2 THE COURT: Look, it's disappointing to me that it's
3 gone down this route, because we're really back where we were
4 on March 22 when I last saw you and sent you off to the
5 magistrate for a settlement conference, at least with respect
6 to sort of the accounting features of this case. So now I'm
7 going to move the case forward. All right. It'll be full
8 steam ahead.

9 Have a great Fourth of July, all right.

10 MR. FISCHBARG: OK. Thanks, Judge.

11 MR. REICHMAN: Thank you, your Honor.

12 (Adjourned)
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